

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 22, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TINA V.,

Plaintiff,

v.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

NO: 1:19-CV-3127-FVS

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

BEFORE THE COURT are the parties' cross motions for summary judgment. ECF Nos. 9 and 10. This matter was submitted for consideration without oral argument. The Plaintiff is represented by Attorney Victoria B. Chhagan. The Defendant is represented by Special Assistant United States Attorney Jacob Phillips. The Court has reviewed the administrative record, the parties' completed briefing, and is fully informed. For the reasons discussed below, the Court **GRANTS** Defendant's Motion for Summary Judgment, ECF No. 10, and **DENIES** Plaintiff's Motion for Summary Judgment, ECF No. 9.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ~ 1

JURISDICTION

Plaintiff Tina V.¹ filed for supplemental security income and disability insurance benefits on November 13, 2015, alleging an onset date of July 1, 2015. Tr. 229-41. Benefits were denied initially, Tr. 150-57, and upon reconsideration, Tr. 160-72. A hearing before an administrative law judge (“ALJ”) was conducted on October 10, 2017. Tr. 46-97. Plaintiff was represented by counsel and testified at the hearing. *Id.* The ALJ denied benefits, Tr. 12-35, and the Appeals Council denied review. Tr. 1. The matter is now before this Court pursuant to 42 U.S.C. §§ 405(g); 1383(c)(3).

BACKGROUND

The facts of the case are set forth in the administrative hearing and transcripts, the ALJ’s decision, and the briefs of Plaintiff and the Commissioner. Only the most pertinent facts are summarized here.

Plaintiff was 51 years old at the time of the hearing. Tr. 53. She obtained her GED. *See* Tr. 258. She lives with her “almost ex-husband” and her teenage son. Tr. 53. Plaintiff has work history as a bartender, mortgage loan officer, and waitress. Tr. 84, 258. She testified that she cannot work because she cannot use her

¹ In the interest of protecting Plaintiff’s privacy, the Court will use Plaintiff’s first name and last initial, and, subsequently, Plaintiff’s first name only, throughout this decision.

1 right wrist and drops things all the time, she cannot stand for more than an hour and
2 sometimes for no more than ten minutes, she cannot sit for “certain amounts of
3 time,” she gets emotional for no reason, and she has trouble concentrating. Tr. 68,
4 80.

5 Plaintiff testified that she had left carpal tunnel surgery in 2016 and
6 considers that surgery to have been a success; and she recently had a cyst removed
7 on her right wrist but she still has a lot of pain. Tr. 57-61. She reported that once
8 her back starts hurting she has to lay down flat, and on a “bad day” the bottom of
9 her feet hurt so badly that she cannot walk, and can “barely get to the bathroom.”
10 Tr. 71-73. Plaintiff testified that she drops things due to weakness in her hands,
11 cannot pick up a gallon of milk and pour it with her right hand, and can only type
12 for five minutes. Tr. 75, 78-79.

13 STANDARD OF REVIEW

14 A district court’s review of a final decision of the Commissioner of Social
15 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
16 limited; the Commissioner’s decision will be disturbed “only if it is not supported by
17 substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153, 1158
18 (9th Cir. 2012). “Substantial evidence” means “relevant evidence that a reasonable
19 mind might accept as adequate to support a conclusion.” *Id.* at 1159 (quotation and
20 citation omitted). Stated differently, substantial evidence equates to “more than a
21 mere scintilla[,] but less than a preponderance.” *Id.* (quotation and citation omitted).

1 In determining whether the standard has been satisfied, a reviewing court must
2 consider the entire record as a whole rather than searching for supporting evidence in
3 isolation. *Id.*

4 In reviewing a denial of benefits, a district court may not substitute its
5 judgment for that of the Commissioner. If the evidence in the record “is susceptible
6 to more than one rational interpretation, [the court] must uphold the ALJ’s findings
7 if they are supported by inferences reasonably drawn from the record.” *Molina v.*
8 *Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not
9 reverse an ALJ’s decision on account of an error that is harmless.” *Id.* An error is
10 harmless “where it is inconsequential to the [ALJ’s] ultimate nondisability
11 determination.” *Id.* at 1115 (quotation and citation omitted). The party appealing
12 the ALJ’s decision generally bears the burden of establishing that it was harmed.
13 *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

14 **FIVE-STEP EVALUATION PROCESS**

15 A claimant must satisfy two conditions to be considered “disabled” within the
16 meaning of the Social Security Act. First, the claimant must be “unable to engage in
17 any substantial gainful activity by reason of any medically determinable physical or
18 mental impairment which can be expected to result in death or which has lasted or
19 can be expected to last for a continuous period of not less than twelve months.” 42
20 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s impairment must
21 be “of such severity that he is not only unable to do his previous work[,] but cannot,

1 considering his age, education, and work experience, engage in any other kind of
2 substantial gainful work which exists in the national economy.” 42 U.S.C. §§
3 423(d)(2)(A), 1382c(a)(3)(B).

4 The Commissioner has established a five-step sequential analysis to determine
5 whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§ 404.1520(a)(4)(i)-
6 (v), 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s
7 work activity. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If the claimant is
8 engaged in “substantial gainful activity,” the Commissioner must find that the
9 claimant is not disabled. 20 C.F.R. §§ 404.1520(b), 416.920(b).

10 If the claimant is not engaged in substantial gainful activity, the analysis
11 proceeds to step two. At this step, the Commissioner considers the severity of the
12 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
13 claimant suffers from “any impairment or combination of impairments which
14 significantly limits [his or her] physical or mental ability to do basic work
15 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
16 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
17 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.
18 §§ 404.1520(c), 416.920(c).

19 At step three, the Commissioner compares the claimant’s impairment to
20 severe impairments recognized by the Commissioner to be so severe as to preclude a
21 person from engaging in substantial gainful activity. 20 C.F.R. §§

1 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more severe
2 than one of the enumerated impairments, the Commissioner must find the claimant
3 disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

4 If the severity of the claimant's impairment does not meet or exceed the
5 severity of the enumerated impairments, the Commissioner must pause to assess the
6 claimant's "residual functional capacity." Residual functional capacity (RFC),
7 defined generally as the claimant's ability to perform physical and mental work
8 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§
9 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the
10 analysis.

11 At step four, the Commissioner considers whether, in view of the claimant's
12 RFC, the claimant is capable of performing work that he or she has performed in the
13 past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). If the
14 claimant is capable of performing past relevant work, the Commissioner must find
15 that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f). If the
16 claimant is incapable of performing such work, the analysis proceeds to step five.

17 At step five, the Commissioner considers whether, in view of the claimant's
18 RFC, the claimant is capable of performing other work in the national economy. 20
19 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination, the
20 Commissioner must also consider vocational factors such as the claimant's age,
21 education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),

1 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the
2 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
3 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
4 work, analysis concludes with a finding that the claimant is disabled and is therefore
5 entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1).

6 The claimant bears the burden of proof at steps one through four. *Tackett v.*
7 *Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the
8 burden shifts to the Commissioner to establish that (1) the claimant is capable of
9 performing other work; and (2) such work “exists in significant numbers in the
10 national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v. Astrue*,
11 700 F.3d 386, 389 (9th Cir. 2012).

12 **ALJ’S FINDINGS**

13 At step one, the ALJ found that Plaintiff has not engaged in substantial gainful
14 activity since July 1, 2015, the alleged onset date. Tr. 18. At step two, the ALJ
15 found that Plaintiff has the following severe impairments: lumbar impairment; carpal
16 tunnel syndrome; sleep disorder; depressive disorder; anxiety disorder; and
17 borderline personality disorder. Tr. 18. At step three, the ALJ found that Plaintiff
18 does not have an impairment or combination of impairments that meets or medically
19 equals the severity of a listed impairment. Tr. 20. The ALJ then found that Plaintiff
20 has the RFC

1 to perform light work as defined in 20 CFR 404.1567(b) and 416.967(b)
 2 except with the following additional limitations: sit/stand at will while
 3 maintaining productivity; occasionally stoop, kneel, crouch, crawl, and
 4 climb ramps and stairs; never balance or climb ladders, ropes, or
 5 scaffolds; frequently handle and finger with the upper extremities; the
 6 claimant can perform unskilled work, defined as routine and repetitive
 7 tasks in two hour increments; off-task 5% of the time but still meet
 8 minimum production requirements; absent from work one day every
 9 three months; cannot work at heights; cannot drive; no working close
 10 proximity to hazardous conditions.

11 Tr. 22. At step four, the ALJ found that Plaintiff is unable to perform any past
 12 relevant work. Tr. 28. At step five, the ALJ found that considering Plaintiff's age,
 13 education, work experience, and RFC, there are other jobs that exist in significant
 14 numbers in the national economy that Plaintiff can perform, including: office helper
 15 and inspector/hand packager. Tr. 29-30. On that basis, the ALJ concluded that
 16 Plaintiff has not been under a disability, as defined in the Social Security Act, from
 17 July 1, 2015, through the date of this decision. Tr. 30.

18 ISSUES

19 Plaintiff seeks judicial review of the Commissioner's final decision denying
 20 her disability insurance benefits under Title II of the Social Security Act and
 21 supplemental security income benefits under Title XVI of the Social Security Act.
 ECF No. 9. Plaintiff raises the following issues for this Court's review:

1. Whether the ALJ properly considered Plaintiff's symptom claims; and
2. Whether the ALJ properly considered the medical opinion evidence.

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DISCUSSION

A. Plaintiff's Symptom Claims

An ALJ engages in a two-step analysis when evaluating a claimant's testimony regarding subjective pain or symptoms. "First, the ALJ must determine whether there is objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged." *Molina*, 674 F.3d at 1112 (internal quotation marks omitted). "The claimant is not required to show that his impairment could reasonably be expected to cause the severity of the symptom he has alleged; he need only show that it could reasonably have caused some degree of the symptom." *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

Second, "[i]f the claimant meets the first test and there is no evidence of malingering, the ALJ can only reject the claimant's testimony about the severity of the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the rejection." *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal citations and quotations omitted). "General findings are insufficient; rather, the ALJ must identify what testimony is not credible and what evidence undermines the claimant's complaints." *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) ("[T]he ALJ must make a credibility determination with findings sufficiently specific to permit the court to conclude that the ALJ did not arbitrarily discredit claimant's testimony."). "The clear

1 and convincing [evidence] standard is the most demanding required in Social
2 Security cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting
3 *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

4 Here, the ALJ found Plaintiff’s medically determinable impairments could
5 reasonably be expected to cause some of the alleged symptoms; however, Plaintiff’s
6 “statements concerning the intensity, persistence and limiting effects of these
7 symptoms are not entirely consistent with the medical evidence and other evidence in
8 the record” for several reasons. Tr. 23.

9 *1. Lack of Objective Medical Evidence*

10 First, the ALJ found the objective medical evidence “does not substantiate”
11 Plaintiff’s allegations of disabling physical and mental health limitations. Tr. 23-27.
12 An ALJ may not discredit a claimant’s pain testimony and deny benefits solely
13 because the degree of pain alleged is not supported by objective medical evidence.
14 *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947
15 F.2d 341, 346-47 (9th Cir. 1991); *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989).
16 However, the medical evidence is a relevant factor in determining the severity of a
17 claimant’s pain and its disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. §
18 404.1529(c)(2).

19 Here, the ALJ set out the medical evidence contradicting Plaintiff’s claims of
20 disabling physical and mental limitations. First, as to her alleged carpal tunnel
21 syndrome, while the ALJ acknowledged that in 2016 Plaintiff underwent left carpal

1 tunnel release and had a mass removed on the dorsum of her right wrist that was
2 “thought to represent hypertrophic tenosynovium,” the ALJ also noted that Plaintiff
3 regularly presented in no distress, maintained full range of motion of the wrists and
4 upper extremities, had normal grip strength and 5/5 manual muscle testing, normal
5 muscle stretch reflexes, and negative Tinel’s and Phalen’s signs. Tr. 24 (citing Tr.
6 333, 355, 370, 391, 435, 455, 506, 550, 706, 721, 733, 740, 745, 748, 799). Even
7 after surgery, Plaintiff reported minimal pain and normal range of motion in her left
8 wrist and fingers, and examinations showed that her finger strength and wrist range
9 of motion was only slightly more limited on the right than left. Tr. 24 (citing Tr. 721-
10 22 (also reporting that she was “over-doing it at home and working with the hand
11 quite a bit”), 740).

12 Further, as to Plaintiff’s alleged lumbar spine condition, the ALJ noted that
13 Plaintiff complained of lower back pain, and numbness and tingling in her lower
14 extremities; she reported swelling in her ankles and toes; and in 2017 Plaintiff was
15 diagnosed as “likely” having lumbar stenosis based on EMG test findings that
16 Plaintiff’s right tibial motor, left superficial peroneal sensory, and right superficial
17 peroneal sensory nerves showed reduced amplitude. Tr. 24, 798-804. However, the
18 ALJ found that despite these findings, the physical examination portion of the 2017
19 electrodiagnostic report also found normal sensation to light touch in Plaintiff’s lower
20 extremities and full strength, which “is consistent with the regularly normal
21 neurological and neurovascular clinical findings” throughout the longitudinal record,

1 including no evidence of deep or superficial venous thrombosis; normal range of
2 motion of the spine; normal upper and lower extremity findings; minimal tenderness
3 with direct palpation of the lumbar spine; benign imaging in 2015; normal straight
4 leg testing results; normal strength and tone; no instability, subluxation or laxity; and
5 normal gait. Tr. 24-25 (citing Tr. 366, 445-46, 494, 496, 500, 506, 550-51, 575, 609,
6 627, 630, 655, 673, 676, 686, 714, 721, 745, 748, 763, 801).

7 Finally, as to her alleged mental health impairments, the ALJ noted that despite
8 Plaintiff's subjective reports of depression and concentration difficulties, the
9 "objective mental status findings of record, in contrast, were regularly normal, and
10 documented normal memory, mood and affect, alertness and orientation." Tr. 25-26
11 (citing Tr. 356, 402, 454, 466, 495, 501, 561-62, 687, 695, 697-98, 706, 751-52, 801).
12 The ALJ concluded that this evidence "does not substantiate [Plaintiff's] allegations
13 of disabling limitations." Tr. 25.

14 Plaintiff argues that she "had ongoing symptoms and functional limitations
15 attributable to properly diagnosed medical/mental impairments with objective
16 findings throughout the relevant period." ECF No. 9 at 14. In support of this
17 argument, Plaintiff offers a "medical summary document[ing] the ongoing nature of
18 [Plaintiff's] medical conditions," including evidence from the relevant adjudicatory
19 period that Plaintiff had positive Tinel's and Phalen's signs on the left in November
20 2015 and May 2016; was started on medication for anxiety and depression in March
21 2016; began physical therapy for back pain in 2016 but indicated it did not relieve her

1 pain; went to the ER for neck and back pain in March 2016 but left without being
2 seen because she was “tired of waiting”; had left carpal tunnel release surgery in June
3 2016 and right wrist surgery to remove a cyst in August 2016; was diagnosed with
4 borderline personality traits, moderate depression, and mild anxiety in October 2016;
5 was noted to have poor fund of knowledge and fair concentration, but normal
6 findings otherwise, in August 2017; and underwent an electromyogram (EMG) in
7 October 2017 which resulted in an assessment of lumbar stenosis, along with normal
8 neurological findings. ECF No. 9 at 8-14 (citing Tr. Tr. 445-46, 565-76, 559, 653,
9 692-93, 706, 711-12, 724, 757, 794, 799-803).

10 As an initial matter, the Court notes that the “mere diagnosis of an impairment
11 . . . is not sufficient to sustain a finding of disability.” *Kay v. Heckler*, 754 F.2d 1545,
12 1549 (9th Cir. 1985). Moreover, despite Plaintiff’s argument to the contrary, the ALJ
13 specifically considered Plaintiff’s claimed carpal tunnel, lumbar spine, and mental
14 health impairments; and regardless of evidence that could be considered favorable to
15 Plaintiff, it was reasonable for the ALJ to find the severity of Plaintiff’s mental and
16 physical symptom claims was inconsistent with benign objective and clinical findings
17 across the longitudinal record. Tr. 21-25. “[W]here evidence is susceptible to more
18 than one rational interpretation, it is the [Commissioner’s] conclusion that must be
19 upheld.” *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). The lack of
20 corroboration of Plaintiff’s claimed limitations by the objective medical evidence was
21 a clear and convincing reason for the ALJ to discount Plaintiff’s symptom claims.

1 2. *Daily Activities*

2 Second, the ALJ found that Plaintiff's "report of activities is not entirely
3 consistent with testimony." Tr. 26. A claimant need not be utterly incapacitated in
4 order to be eligible for benefits. *Fair*, 885 F.2d at 603; *see also Orn v. Astrue*, 495
5 F.3d 625, 639 (9th Cir. 2007) ("the mere fact that a plaintiff has carried on certain
6 activities . . . does not in any way detract from her credibility as to her overall
7 disability."). Regardless, even where daily activities "suggest some difficulty
8 functioning, they may be grounds for discrediting the [Plaintiff's] testimony to the
9 extent that they contradict claims of a totally debilitating impairment." *Molina*, 674
10 F.3d at 1113.

11 In support of this finding, the ALJ noted that despite Plaintiff's allegations that
12 she could not lift a gallon of milk with her right hand, could not type for more than
13 five minutes, sometimes needed help getting out of bed, and on a bad day can barely
14 walk to the bathroom due to foot pain, Plaintiff also reported repeatedly that she was
15 able to attend to all personal daily activities without assistance. Tr. 23, 26, 73, 77-79,
16 756, 791. These activities included shopping for food, preparing meals, doing
17 laundry, assisting with chores, maintaining personal hygiene, making plans
18 independently of others, driving herself for transportation, walking 20 minutes
19 several times a week, and making jewelry for a hobby. Tr. 21, 26-27, 54-55, 82, 450,
20 496, 556, 687, 755, 790-91.

1 Plaintiff generally argues that this finding was improper because Plaintiff
2 testified that she had difficulty performing household chores, and “tried to get as
3 much done as fast as she could, but once she started hurting she had to lie down.”
4 ECF No. 9 at 15. However, the Court finds it was reasonable for the ALJ to conclude
5 that Plaintiff’s documented activities, including driving and taking care of all her
6 personal daily activities without assistance, was inconsistent with her allegations of
7 debilitating functional limitations. *Molina*, 674 F.3d at 1113 (Plaintiff’s activities
8 may be grounds for discrediting Plaintiff’s testimony to the extent that they contradict
9 claims of a totally debilitating impairment). This was a clear and convincing reason
10 to discredit Plaintiff’s symptom claims.

11 3. *Inconsistencies*

12 Next, the ALJ cited “inconsistent reports” by Plaintiff as a reason to discount
13 her symptom claims. Tr. 26-27. In evaluating the severity of Plaintiff’s symptoms,
14 the ALJ may consider inconsistencies in Plaintiff’s statements, and between her
15 testimony and her conduct. *See Thomas*, 278 F.3d at 958-59; *Tommasetti*, 533 F.3d
16 at 1039 (prior inconsistent statements may be considered). First, the ALJ noted that
17 Plaintiff testified that she “stopped working in her last job due to her carpal tunnel
18 syndrome and other impairments,” but in September 2015 Plaintiff told a medical
19 provider that she was fired because she overslept after her son turned off her alarm
20 clock, and she subsequently reported that she was fired from a waitressing job
21 because of a “bad boss.” Tr. 26, 74, 450, 561. An ALJ may consider that a claimant

1 stopped working for reasons unrelated to the allegedly disabling condition when
2 weighing the Plaintiff's symptom reports. *Bruton v. Massanari*, 268 F.3d 824, 828
3 (9th Cir. 2001).

4 Second, the ALJ noted that Plaintiff testified that she “discontinued her
5 medication because it was ineffective, but this is inconsistent with her self-reports
6 throughout the record. Contrary to her testimony, [Plaintiff] reported improved mood
7 and symptoms with medication and counseling.” Tr. 26, 64, 466, 468, 751-53. Thus,
8 the ALJ reasonably concluded that Plaintiff’s “mental symptoms and limitations were
9 not as chronic or severe as alleged.” Tr. 26. Finally, the ALJ noted that Plaintiff
10 reported to her treatment provider that her hobby was jewelry making, “which
11 requires handling and fine motor skills.” Tr. 26, 557. The Court also notes that
12 Plaintiff testified that when she cannot sleep at night because she is “upset about
13 things,” she gets up to “color or just do anything.” Tr. 56. These reports are
14 inconsistent with her testimony that she had weakness in her hands and constantly
15 drops “everything.” Tr. 75.

16 Plaintiff briefly argues that the ALJ improperly rejected Plaintiff’s symptom
17 claims based on “alleged inconsistencies” because (1) the reference to Plaintiff’s
18 jewelry-making does not “state what this entails or how often she currently made
19 jewelry, if at all”; and (2) it was “not unreasonable for a person to have multiple
20 reasons for leaving a job.” ECF No. 9 at 15-16. However, based on the foregoing
21 evidence, the Court finds it was reasonable for the ALJ to rely on multiple

1 inconsistencies as a reason to discount Plaintiff's symptom claims. *See Burch*, 400
2 F.3d at 679 (where evidence is susceptible to more than one interpretation, the ALJ's
3 conclusion must be upheld).

4 *4. Additional Reasons*

5 Defendant argues that Plaintiff failed to challenge all of the ALJ's reasons for
6 rejecting Plaintiff's symptom claims, and has therefore waived her opportunity to
7 challenge those reasons. ECF No. 10 at 3-5. The Court may decline to address
8 issues not raised with specificity in Plaintiff's opening brief. *Carmickle v. Comm'r of*
9 *Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008); *see also Kim v. Kang*, 154
10 F.3d 996, 1000 (9th Cir. 1998) (the Court may not consider on appeal issues not
11 "specifically and distinctly argued" in the party's opening brief). Despite Plaintiff's
12 waiver, the Court will briefly review the two additional reasons arguably given by the
13 ALJ to discount Plaintiff's symptom claims.

14 First, the ALJ noted that Plaintiff reported "doing well after left carpal tunnel
15 surgery and right dorsal hand mass resection, and that her pain was minimal. She
16 indicated that her range of motion was back to normal in the left wrist and fingers,
17 and she denied numbness or tingling." Tr. 24, 711. The ALJ also noted that
18 examinations post-surgery showed her finger strength and wrist range of motion was
19 only slightly more limited on the right than the left; and Plaintiff reported "over-
20 doing it at home and working with the hand quite a bit." Tr. 24, 721-22, 740.

21 Moreover, as discussed above, Plaintiff reported improvement in mood and mental

1 health symptoms with medication and counseling. Tr. 26. A favorable response to
2 treatment can undermine a claimant's complaints of debilitating pain or other severe
3 limitations. *See Tommasetti*, 533 F.3d at 1040; *see Warre v. Comm'r of Soc. Sec.*
4 *Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) (Conditions effectively controlled with
5 medication are not disabling for purposes of determining eligibility for benefits).

6 Second, as to her lumbar spine condition, the ALJ found that “[i]nconsistent
7 with [Plaintiff’s] report of severe back and lower extremity pain that regularly
8 prevented her from getting out of bed, [Plaintiff] received very conservative
9 medication management and physical therapy, and she reported that her symptoms
10 were relieved with manual traction. In fact, [Plaintiff’s] provider indicated that she
11 did not think that [Plaintiff’s] back symptoms would prevent her from working.” Tr.
12 25, 474, 562, 656, 747-48. In her reply brief,² Plaintiff argues that Defendant “does

13
14 _____
15 ² In her reply brief, Plaintiff additionally contends that the ALJ failed to consider
16 “barriers to treatment,” however, the only evidence from the relevant adjudicatory
17 period cited by Plaintiff to support this argument in relation to Plaintiff’s alleged
18 back pain is the lack of MRI results in the record. ECF No. 11 at 6. The Court
19 declines to find the decision of Plaintiff’s treatment providers to not order an MRI,
20 without more evidence as to why the test was not ordered, was a “barrier to
21 treatment” such that it should have been considered by the ALJ as part of the
conservative treatment finding.

1 not point to any medical opinion indicating that some other, more aggressive form of
2 treatment would have been recommended if [Plaintiff's] condition had been more
3 serious.” ECF No. 11 at 5. However, evidence of “conservative treatment” is
4 sufficient to discount a claimant's testimony regarding the severity of an impairment.
5 *Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007).

6 The Court concludes that the ALJ provided clear and convincing reasons,
7 supported by substantial evidence, for rejecting Plaintiff's symptom claims.

8 **B. Medical Opinions**

9 There are three types of physicians: “(1) those who treat the claimant (treating
10 physicians); (2) those who examine but do not treat the claimant (examining
11 physicians); and (3) those who neither examine nor treat the claimant [but who
12 review the claimant's file] (nonexamining [or reviewing] physicians).” *Holohan v.*
13 *Massanari*, 246 F.3d 1195, 1201–02 (9th Cir. 2001) (citations omitted). Generally, a
14 treating physician's opinion carries more weight than an examining physician's, and
15 an examining physician's opinion carries more weight than a reviewing physician's.
16 *Id.* If a treating or examining physician's opinion is uncontradicted, the ALJ may
17 reject it only by offering “clear and convincing reasons that are supported by
18 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
19 Conversely, “[i]f a treating or examining doctor's opinion is contradicted by another
20 doctor's opinion, an ALJ may only reject it by providing specific and legitimate
21 reasons that are supported by substantial evidence.” *Id.* (citing *Lester v. Chater*, 81

1 F.3d 821, 830-31 (9th Cir. 1995)). “However, the ALJ need not accept the opinion of
2 any physician, including a treating physician, if that opinion is brief, conclusory and
3 inadequately supported by clinical findings.” *Bray*, 554 F.3d at 1228 (quotation and
4 citation omitted).

5 The opinion of an acceptable medical source such as a physician or
6 psychologist is generally given more weight than that of an “other source.” *See* SSR
7 06-03p (Aug. 9, 2006), *available at* 2006 WL 2329939 at *2; 20 C.F.R. § 416.927(a).
8 “Other sources” include nurse practitioners, physician assistants, therapists, teachers,
9 social workers, and other non-medical sources. 20 C.F.R. §§ 404.1513(d),
10 416.913(d). The ALJ need only provide “germane reasons” for disregarding an
11 “other source” opinion. *Molina*, 674 F.3d at 1111. However, the ALJ is required to
12 “consider observations by nonmedical sources as to how an impairment affects a
13 claimant's ability to work.” *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987).

14 Plaintiff argues the ALJ erroneously considered the opinions of treating
15 physician Shilpa Muddasani, M.D. and chiropractor Kenneth Briggs, D.C. ECF No.
16 9 at 17-21.

17 *1. Shilpa Muddasani, M.D..*

18 In September 2017, treating physician Dr. Muddasani opined that work on a
19 regular and continuous basis would cause Plaintiff’s condition to deteriorate “if
20 patient does not take precautions to protect her back”; it is more probable than not
21 that Plaintiff would miss four or more days per month of work if she attempted to

1 work a 40-hour per week schedule; she is limited to frequent handling with right and
2 left upper extremities, and she is limited to occasional reaching with right and left
3 upper extremities. Tr. 795-96. Dr. Muddasani opined that Plaintiff was able to
4 perform sedentary work on a sustained, competitive basis. Tr. 796. The ALJ gave
5 Dr. Muddasani's opinion little weight because

6 Dr. Muddasani did not provide a completed evaluation with objective
7 findings consistent with such limitations. Nor do Dr. Muddasani's
8 treatment notes contain objective evidence consistent with the opinion.
9 To the contrary, the notes from Dr. Muddasani reflect a largely
10 unremarkable presentation. Dr. Muddasani's opinion is also not
11 consistent with most other records, which document regularly normal
12 physical examinations, improvement with conservative treatment, as
13 [discussed earlier in the decision].

14 Tr. 28. Plaintiff generally argues that this finding was not supported by substantial
15 evidence because "Dr. Muddasani identified the objective findings upon which she
16 based her opinion," and the "medical records from her clinic, as well as the records
17 of specialists to whom she referred [Plaintiff] support her conclusion." ECF No. 9 at
18 19.

19 Relevant factors to evaluating any medical opinion include the amount of
20 relevant evidence that supports the opinion, the quality of the explanation provided
21 in the opinion, and the consistency of the medical opinion with the record as a
whole. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1042 (9th Cir. 2007); *Orn*, 495 F.3d
at 631. Moreover, an ALJ may discount an opinion that is conclusory, brief, and
unsupported by the record as a whole, or by objective medical findings. *Batson v.*

1 *Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004). Here, Dr.
2 Muddasani noted clinical findings of “sensory deficits” in Plaintiff’s right lower
3 extremity, and x-rays showing degenerative disc disease of the cervical and lumbar
4 spine; however, as noted by Defendant “[i]t is not clear what objective ‘sensory
5 deficit’ findings Dr. Muddasani was referring to and her vague descriptions and
6 reference to an x-ray and degenerative diagnosis do not explain or support the severe
7 limitations that Dr. Muddasani assessed.” ECF No. 10 at 13. Moreover, it is proper
8 for an ALJ to reject a medical opinion if it is inconsistent with the provider's own
9 treatment notes. *See Tommasetti*, 533 F.3d at 1041. As noted by the ALJ, the notes
10 from Dr. Muddasani reflect a “largely unremarkable presentation,” and are
11 unaccompanied by objective evidence consistent with the severity of her opinion.
12 Tr. 28 (citing Tr. 451-52, 559, 562, 740-41, 751-52). Finally, the consistency of a
13 medical opinion with the record as a whole is a relevant factor in the ALJ’s
14 evaluation of a medical opinion. *Orn*, 495 F.3d at 631. Here, the ALJ properly
15 found that Dr. Muddasani’s opinion is not consistent with “most other records,
16 which document regularly normal physical examinations,” including, despite
17 Plaintiff’s argument to the contrary, physical examination findings and notes from
18 other providers within Dr. Muddasani’s clinic that Plaintiff was not experiencing
19 back pain or numbness and tingling in her legs, and had normal range of motion and
20 normal sensation in her lower extremities. Tr. 28, 556, 706-07, 747, 801.

1 Based on the foregoing, and regardless of evidence in the overall record that
2 could be considered more favorable to Plaintiff, it was reasonable for the ALJ to
3 reject Dr. Muddasani's opinion because it was unsupported by objective findings,
4 inconsistent with her own treatment notes, and inconsistent with the record as a
5 whole. *See Burch*, 400 F.3d at 679. The Court finds the ALJ offered specific and
6 legitimate reasons, supported by substantial evidence, to discount Dr. Muddasani's
7 opinion.

8 *2. Kenneth Briggs, D.C.*

9 In October 2017, treating chiropractor Dr. Briggs opined that work on a
10 regular and continuous basis would cause Plaintiff's condition to deteriorate
11 "depending on the work she is required to do"; Plaintiff would miss three days per
12 month of work if she attempted to work a 40-hour per week schedule "depend[ing]
13 on the type of work she was asked to do"; and she has no manipulative limitations
14 involving her upper extremities. Tr. 797-98. Dr. Briggs opined that Plaintiff was
15 able to perform sedentary work on a sustained, competitive basis. Tr. 798. The ALJ
16 gave little weight to Dr. Briggs' opinion because

17 Dr. Briggs does not appear to have a treating relationship with
18 [Plaintiff] because the record contains no treatment notes from Dr.
19 Briggs. Moreover, he did not provide a completed evaluation with
20 objective findings consistent with his opinion. And his opinion is
21 inconsistent with the longitudinal objective evidence, [as cited
elsewhere in the decision].

Tr. 28. As an initial matter, while the ALJ may consider the length and nature of a

1 treatment relationship in evaluating a medical opinion, the ALJ may not discredit a
2 medical opinion solely because the provider was not a treating source. *See* 20
3 C.F.R. §§ 404.1527(c), 416.927(c). However, as above, an ALJ may discount an
4 opinion that is conclusory, brief, and unsupported by the record as a whole, or by
5 objective medical findings. *Batson*, 359 F.3d. at 1195; see also *Orn*, 495 F.3d at
6 631 (the consistency of a medical opinion with the record as a whole is a relevant
7 factor in the ALJ's evaluation of a medical opinion).

8 Here, Plaintiff contends that Dr. Briggs' opinion was properly supported
9 because it includes a list of "clinical findings" that includes abnormal lumbar range
10 of motion, tenderness, spasms, "palpable fixations of L3-5, SI and both sacroiliac
11 joints," and positive "orthopedic tests." ³ ECF No. 11 (citing Tr. 797). However, as

12
13 _____
14 ³ Plaintiff also argues that "[i]f the ALJ felt [Dr. Briggs'] treatment notes were
15 necessary, he should have taken steps to obtain them. . . . Rather than proceeding
16 as a 'mere umpire' at the administrative hearing, the ALJ has an independent duty
17 to fully develop the record." ECF No. 9 at 21. An ALJ's duty to develop the
18 record is triggered only when there is ambiguous evidence or when the record is
19 inadequate to allow for proper evaluation of the evidence." *Mayes v. Massanari*,
20 276 F.3d 453, 459-60 (9th Cir. 2001). However, as noted by Defendant, it is
21 Plaintiff's burden to prove disability; and this burden cannot be shifted to the ALJ
simply by virtue of the ALJ's duty to develop the record. ECF No. 10 at 17-19;

1 noted by Defendant “the fact that a chiropractor refers to positive tests on an
2 opinion without providing any actual examination findings does not equate to
3 objective evidence supporting” the assessment of severe limitations. ECF No. 10 at
4 15. Relevant factors to evaluating any medical opinion include the amount of
5 relevant evidence that supports the opinion, the quality of the explanation provided
6 in the opinion, and the consistency of the medical opinion with the record as a
7 whole. *Lingenfelter*, 504 F.3d at 1042; *Orn*, 495 F.3d at 631. Here, as noted in the
8 ALJ’s decision, and discussed in detail above, the longitudinal record contains
9 regularly normal physical examination findings, including normal range of motion
10 of the spine; normal upper and lower extremity findings; minimal tenderness with
11 direct palpation of the lumbar spine; benign imaging in 2015; normal straight leg
12 testing results; normal strength and tone; no instability, subluxation or laxity; and
13 normal gait. Tr. 24-25 (citing Tr. 366, 445-46, 494, 496, 500, 506, 550-51, 575,
14 609, 627, 630, 655, 673, 676, 686, 714, 721, 745, 748, 763, 801).

15 Thus, the Court finds it was reasonable for the ALJ to reject the severe
16 limitations assessed by Dr. Briggs because they were not supported by specific
17 objective medical tests or clinical findings, whether conducted by Dr. Briggs
18

19 _____
20 *see Mayes*, 276 F.3d at 459-60. The ALJ did not find, and the Court is unable to
21 discern, any inadequacy or ambiguity that did not allow for proper evaluation of
the record as a whole. *Bayliss*, 427 F.3d at 1217.

1 himself or found in the longitudinal medical record. *See Burch*, 400 F.3d at 679.

2 These were germane reasons to discount Dr. Briggs' opinion.

3 Based on the foregoing, the Court finds no error in the ALJ's consideration of
4 the medical opinion evidence.

5 **CONCLUSION**

6 A reviewing court should not substitute its assessment of the evidence for the
7 ALJ's. *Tackett*, 180 F.3d at 1098. To the contrary, a reviewing court must defer to
8 an ALJ's assessment as long as it is supported by substantial evidence. 42 U.S.C. §
9 405(g). As discussed in detail above, the ALJ provided clear and convincing
10 reasons to discount Plaintiff's symptom claims and properly considered the medical
11 opinion evidence. After review the court finds the ALJ's decision is supported by
12 substantial evidence and free of harmful legal error.

13 **ACCORDINGLY, IT IS HEREBY ORDERED:**

14 1. Plaintiff's Motion for Summary Judgment, **ECF No. 9**, is **DENIED**.

15 2. Defendant's Motion for Summary Judgment, **ECF No. 10**, is

16 **GRANTED.**

17 The District Court Executive is hereby directed to enter this Order and
18 provide copies to counsel, enter judgment in favor of the Defendant, and **CLOSE**
19 the file.

20 **DATED** June 22, 2020.

21 s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
United States District Judge